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Tolleration. 592

OR

Simply and singly to meet upon the
Account of Religion, really to Worship
and serve the Lord, without any un-
lawful Act to be done or intended, is
not an Offence against Law.

And also concerning Seditious Sectaries, disloyal
Persons, and Seditious Conventicles punishable by
the late Act. And likewise concerning Banishment;
For no man by the Law of the Land ought to be
Banished out of his Native Country for the service
and Worship of God; Or as hereafter Ap-
peareth.

R. Farnworth

Written in the eighth Month. 1664.

2. V. 1011

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Concerning Seditious Sectaries, Disloyal Persons, and Seditious Conventicles, &c.

First, By the late Act of Parliament Entituled An Act to prevent and Suppress seditious Conventicles, it is declared in the Preamble or ground of the Act, which is the Reason for making the Act, ^{1st. Car. 1.} _{fol. 25.} That the speedy Remedies thereby Provided are against the growing and dangerous Practises of seditious Sectaries, and disloyal Persons, who under pretence of tender Consciences, do at their meetings contrive Insurrections, as late experience hath shewed.

So that those are the dangerous Persons and Practises, that are to be suppressed, who do at their meetings contrive Insurrections as aforesaid; And they are the seditious Sectaries, and disloyal Persons, and their meetings are seditious Conventicles, who assemble and meet together under colour of Religious exercises, and pretend tenderness of Conscience, to the intent that they may contrive Insurrections, and cover over and prosecute a wicked intention under so fair a pretence, which so to do is great wickedness; and if there be any Persons or People who meet together under colour of religious exercise, and pretence of tenderness of Conscience, to contrive Insurrections at their meetings; There is good Reason to provide Remedies against the growing and dangerous practises of such as

do meet to contrive Insurrections, as aforesaid; And those meetings may justly be declared *To be seditious Conventicles*, and unlawful Assemblies, because they meet about seditious and unlawful Actions, who meet to design and contrive Insurrections.

16. Car. 2.
fol. 26.

Secondly, It is declared to be an Offence for five Persons over and above them of the household, to be present at any Assembly, Conventicle, or Meeting, under colour or pretence of any Exercise of Religion, in other manner than is allowed by the *Lyturgie*, or practise of the Church of *England*.

So that it is no Offence (against the Law) for Persons to Assemble and meet together really and truly for no other end, intent or purpose but to serve and worship the Lord, though they meet to the number of five, or above, beside them of the household, because the *Liturgie* of the Church allows of the same, saying, *It is right, very meet, and our bounden duty to meet together at all times and in all places to give thanks (or perform duty and service) to the Lord.*

What is it for many persons to assemble and meet together upon the account of religious Exercise, according to the manner allowed of by the *Liturgie*, or practise of the Church of *England*?

To assemble and meet together (to the number of five or above, beside them of the household) before the Lord upon the account of Religion, as Worshippers of him, to render thanks unto God for the great benefits that we have received of him, to set forth his most worthy praise, to hear his most holy Word, and to ask those things that be requisite and necessary, both for soul and body, and in the performance of that duty to accom-

accompany one another in Prayer, with a pure heart, and an humble voice to the Throne of Gods heavenly grace, is according to the *Liturgie* of the Church as aforesaid, and is allowed of thereby. For proof thereof, see the beginning of the *Liturgie*.

What is it then for Persons to assemble and meet together to the number of five, or above, beside the household or family in other manner than is allowed of by the *Liturgie*, or practise of the Church of England?

To assemble and meet together under colour or pretence of religious Exercises, To contrive Insurrections is to meet in other manner than is allowed of by the *Liturgie* or practise of the Church; for neither the *Liturgie*, nor practice of the Church alloweth of any such actions.

After what manner are the persons offending against the said Act (concerning meetings as aforesaid) to be apprehended?

It seems a Justice of Peace, or chief Magistrate is to repair unto the place, where such meetings are held, or to be held, and dissolve, or prevent the same.

And if such Justice of Peace, or chief Magistrate, be not able to suppress or dissolve the same, Then he may by certificate under his hand and seal, made to the Lientenants, Deputy. Lientenants, or Cnmmissioned Officers of the *Militia*, &c. of his particular Information, or knowledge require or call for their Assistance; 16. Car. 2.
fol. 34, 35. And he is to go in person with them unto the place, where the meetings are held, or to be held, and use the best means they can to dissolve, and dissipate, or prevent the same.

But it seems, That the Lientenants, Deputy Lientenants

tenants, nor Commissioned Officers of the *Militia*, or souldiers, &c. are not to meddle in dissolving, dissipating or preventing such meetings without a certificate from under the hand and seale of a Justice of Peace, or chief Magistrate, who himself is to be present with them at the place where the meeting is held, or to be held as aforesaid. 16. *Car. 2. Reg. fol. 34, 35.*

And no dwelling house of any person whatsoever must be entred into with force by vertue of the said Act, but in the presence of one Justice of the Peace, or chief Magistrate, except within the City of *London*; And there no dwelling house must be entred into as aforesaid, but in the presence of one Justice of the Peace, Alderman, deputy Alderman, or any one Commissioner of the Lieutenancy for the City of *London*. 16. *Car. 2. Regis fol. 37.*

After the persons offending, as aforesaid, be apprehended, how must they be convicted, and tried?

It seems, That for the first and second offence, They must not be convicted or tried by a Jury, but two Justices of the Peace, or chief Magistrate (if it be within a corporation, where there are not two Justices of Peace) They are required and enjoined upon proof to them, or him respectively made of such offence, either by confession of the Party, or Oath of witnesses, or notorious evidence of the fact, To make a Record of every such offence under their hands and seals respectively, which Record so made, is to be taken and adjudged to be a full and perfect Conviction of every such Offender, for such Offence. 16. *Car. 2. Regis fol. 26, 27.*

And it seems, the Offenders for the first and second Offence

Offence in that case, must not first be committed to Prison, and afterward tried by a Jury, in order to Judgment, or final determination of the matter; But they must first be fined, and afterward imprisoned, if they do not pay down the Fine, which Fine for the first offence is not to exceed five pounds, or imprisonment without Bail or Mainprize, not exceeding three months for none payment thereof, and not exceeding ten pounds for the second offence, or imprisonment for some time without Bail or Mainprize for non-payment thereof, not exceeding six months. 16. Car. 2. *Regis fol. 27, 28.*

Simply to meet upon the account of Religion, really to worship and serve the Lord, without any unlawful Act to be done or intended, is not an Offence against Law.

Is there any general Custome, or Statute made directly against the true spiritual service and worship of God in the spirit, *John 4. 23, 24.* If there be any general Custome or Statute made directly against the true spiritual service and worship of God in the spirit; Is not such Custome and Statute directly against the Law of God; And if there be any general Custome, or Statute directly against the Law of God, Is not such a Custome and Statute void in it self? seeing it is declared in the book called *Doctor and Student*, or grounds of the Law of the Land, That the second ground of the Law of *England* is the Law of God, and also if any general Custome were directly against the Law of God, or if any Statute were made directly against it, the Custom and Statute were void. *Doct. & Stud. cap. 6.*

*Doct. and
Stud. cap. 6*

And

And the King hath been pleased to promise and declare a liberty to tender Consciences, and that no man shall be disquieted, and called in Question for differences of opinion in matters of Religion, which do not disturb the peace of the Kingdome, And have not all those an interest in the Kings promises, who never yet forfeited the same, but are utterly and absolutely against designing and contriving any Insurrection, and the remedies provided by the act are against them (that have forfeited their intrest in the Kings promises) who do at their meetings, contrive Insurrections, Therefore the Innocent ought not to be punished by Imprisonment or Banishment, &c.

Dalt. 405. For the liberty of a man is a thing specially favoured by the comon Law of the Land, and therefore saith *Dalton* in his Iustice of peace, if any of the Kings Subjects shall Imprison another without sufficient warrant of him or of his Law, the party grieved may have his action, and shall recover damages against the other, and the King also shall have a fine of him, for Imprisonment of another without offence of the Law is one of the Kings Royall prerogatives annexed to the Crown. See *Dalt. I. P. 406.*

Magna Charta cap. 29. And by the Statute of *Magna Charta* (many times confirmed in Parliament) it is enacted that no freeman shall be taken and Imprisoned, or Disseized of his Freehold, or Liberties, or free Customs, or be Outlawed, or Exiled, or any otherwise destroyed, nor we shall not passe upon him, nor condemne him but by lawfull Iudgement of his Peers, or by the Law of the Land, we shall sell to no man we shall deny, or defer to no man, either Iustice, or right. *Mag. 29.*

The

The Confirmation of the great Charters saith, that all Majors Sheriffes, Iustices and other Ministers which under us have the Laws of the Land to guide them, shall allow the said Charters pleaded before them in Judgment in all points. 25. Edw. 1. c. 1. ^{25. Edw. 1. cap. 1.}

And we will, that if any Judgment be given from henceforth contrary to the points of the Charters, by the Justices, or by any other our Ministers that hold Plea before them against the Points of the Charters, It shall be undone and holden for nought. See the Stat. ^{25. Edw. 1. cap. 1.} 25. Edw. 1. cap. 2.

A Confirmation of the great Charters, and a Repeal of those Statutes that be made to the contrary.

At the Parliament of our Lord the King, holden at Westminster the first day of May, the two and fortieth Year of his Raigin; It is assented and accorded, That the great Charter, and the Charter of the Forrest, be holden and kept in all Points; And if any Statute be made to the contrary, That shall be holden for none. Stat. 42. Edw. 3. cap. 1.

What Persons are they that the late Act is made against?

They are seditious Sectaries, and disloyal Persons, who under pretence of tender Consciences do at their Meetings contrive Insurrections. 16. Car. 2. Regis 25, 26.

To meet together under colour of Religious Exercise, and pretence of tenderness of Conscience, to contrive insurrections, is a seditious Conventicle, and an unlawful Assembly; And those are the persons and meetings which the Act doth provide Remedies against.

For first, the Title of the Act is to prevent and suppress seditious Conventicles. Secondly, the Remedies provided by the said Act are against the growing and dangerous practises of seditious Sectaries, and disloyal Persons, who do at their meetings contrive Insurrections, as aforesaid, Thirdly, the Execution or Penalties of the Act are to be inflicted upon such Persons, and for preventing of the mischiefs which may grow by such seditious and tumultuous meetings under pretence of Religious Worship. 16. Car. 2. Regis fol. 25, 26, 54.

It seems, That for Persons to assemble and meet together under pretence of tender Consciences, to contrive Insurrections, is a seditious Conventicle, and unlawful Assembly punishable by the said Act.

2. It seems, That for Persons to the number of five, or above, &c. to meet together under pretence of Religious Worship, to be mischievous, seditious, and tumultuous, it is a seditious Conventicle, and unlawful Assembly, punishable by the late Act, as aforesaid.

For it is Enacted by the Authority of Parliament, for better preventing of the mischiefs which may grow by such seditious and tumultuous meetings, under pretence of Religious Worship, *That the Lieutenants, Deputy Lieutenants, Commissioned Officers of the Militia, Souldiers and Sheriffs, &c. by Certificate made to them respectively, under the hand and seal of a Justice of Peace, or chief Magistrate, of his particular information, or knowledge of such unlawful meetings or Conventicles, held, or to be held in their respective Counties or places; And that he (with such Assistance as he can get together is not able to suppress or dissolve the same) shall* and

and may, and are required, to repair (with the Justice of Peace, or chief Magistrates) to the place where they are so held, and by the best means they can to dissolve and dissipate, or prevent such unlawful meetings. 16. Car. 2. Regis fol. 34, 35.

Is it not plain and clear by the said Act, That the meetings which are to be dissolved and dissipated, or prevented as aforesaid, are seditious and tumultuous meetings? And is it not as plain, That those seditious and tumultuous meetings, are such meetings as are seditious Conventicles and unlawful Assemblies, which the Act provides remedies against; and also Penalties for the preventing of the mischiefs that may grow by such seditious and tumultuous meetings, under pretence of Religion, at which they do contrive Insurrections, as aforesaid.

Are not those meetings only accounted unlawful by the said Act, as are seditious and tumultuous meetings? And are not those the seditious meetings at which there is Insurrection contrived under pretence of Religious Worship? And is it not plain that the meetings of the People of God, reproachfully called *Quakers*; which are only for the Service and Worship of God, are not unlawful Assemblies, nor seditious Conventicles, because they are peaceable, and not seditious and tumultuous meetings; for they neither meet to contrive Insurrection, nor with force and violence to the terror of the People, nor to do any unlawful Act with violence or force, as daily experience doth manifest: And ought not therefore the Innocent People of God (called *Quakers*) to be freed and clearly acquitted from the force of the Penalties?

There must be Sedition and Tumults, or the contriving of some Insurrection, intended or acted under colour of Religious Worship (it seems) to make a seditious Conventicle , and unlawful Assembly or meeting punishable by the late Act. And if there be sedition, must it not be either in Words or Actions , or both ; and if there be no sedition, nor contriving of Insurrection at meetings under colour of Religious Worship and pretence of tenderness of Conscience, how can those meetings be justly punished as seditious and tumultuous meetings ? Seeing the Remedies and Penalties of the Act are provided against the growing and dangerous practises of Seditious Sectaries , and disloyal Persons, who under pretence of tender Consciences, do at their meetings contrive Insurrections, as late experience hath shewed : And to prevent the mischiefs which may grow by such seditious and tumultuous meetings under Religious pretences. 16. *Car. 2. Regis*, fol. 25, 26, 34, 35.

Concerning Sedition, and wicked Sectaries, &c.

23 *Eliz. c. 1* Doth it not appear by a Statute made in the three and twentieth year of the Raighn of Queen *Elizabeth*, Entituled, an *Act for retaining the Queens Subjects in their due obedience, who are seditious or wicked Sectaries, and disloyal Persons.*

1. Are they not such Persons as pretend to have Power from the See of *Rome* to absolve People ?

23. *Eliz. 1.*

2. Are they not such Persons who shall or may persuade the Kings Subjects from their natural obedi-

ence

ence to his Majesty, and from the Protestant Religion established to the Romish Religion. 23. *Elizabeth cap. 1.*

3. Are they not such as move the Kings Subjects to promise any obedience to any pretended authority of the See of *Rome*.

4. Are they not such also as are willing to be withdrawn from the Church of *England* to the Church of *Rome*?

5. Are they not such as brought, or shall bring in and put in Execution Bulls, Writings and Instruments, and other superstitious things from the See of *Rome*; And in respect thereof did withdraw great numbers from their due obedience to her Majesties Laws established for the service of God; And did also withdraw divers of the Queens Subjects from their natural obedience to her Majesty to obey the usurped authority of *Rome*. 23. *Eliz. cap. 1.*

Are not those seditious Persons, and seditious Actions, for any to withdraw the Kings Subjects from the Common Prayer Book, and that form of Religion and Worship as it is now established, to reconcile them to the Romish Religion, and as aforesaid? And is not that to withdraw the Kings Subjects from their natural obedience to his Majesty, &c.

But the Innocent People of God reproachfully called Quakers, are free from such seditious principles and practises, and how can their Godly Meetings be said to be seditious Conventicles and unlawful assemblies.

And the Statute made in the five and thirtieth year of the Raign of Queen *Elizabeth*, against seditious Con-

venticles, was for the preventing and avoiding of such great inconveniences and perils as might happen, and grow by the wicked and dangerous practices of seditious Sectaries, and disloyal persons; And is it not plaine by the Statute aforesaid (*viz.* the 23. *Eliz.* 1.) who are those seditious or wicked Sectaries, and disloyal Persons? And is not plain that the Quakers so called are not a People of such wicked principles and seditious Actions as aforesaid.

Concerning unlawful Assemblies, &c.

Seditious and Tumultuous Meetings are declared by the late Act to be unlawful Assemblies, so that they are seditious and tumultuous meetings that are to be dissolved and dissipated or prevented, as by the Statute appeareth. See 16. *Car.* 2. *Regis fol.* 34. 35.

And how doth it appear that the godly meetings of the Quakers are seditious and tumultuous meetings? Must it not appear by Words and Actions? and if there be no such things apparent, are they not innocent and free from the same, as aforesaid?

Saith *Dalton* in his *Justice of Peace*, An unlawful Assembly, &c. Is where three persons or more shall gather together, come or meet in one place, to do some unlawful Act with violence. See *Dalt. I. P. fol.* 277.

And is it not plain and evident that the innocent Quakers do not meet to do any unlawful Act with violence? How then are their meetings said to be unlawful meetings?

Saith

Saith *Dalton*, when three Persons and more shall come and Assemble themselves together, to the intent to do any unlawful Act with force or violence against the Person of another, his Possession, or Goods, as to Kill, Beat, or otherwise to hurt a man, to pull down a House, Wall, Pale, Hedge or Ditch, wrongfully to enter upon, or into another mans Possession, House or Land, &c. Or to cut or take away Corn, Grass, Wood, or other goods wrongfully, or to Hunt unlawfully in any Park or Warren, or to do any other unlawful Act (with force or violence) against the Peace, or to the manifest terror of the People, if they only meet to such a purpose or intent, This is an unlawful Assembly. *Dalt. 1. P. fol. 278.*

But it is as clear as the Sun at noon day, That the innocent People of God (called Quakers) do not meet together to such a purpose or intent, to do any such unlawful actions, with force or violence, nor to the manifest terror of the People: Therefore how can their godly meetings be truly said to be unlawful Assemblies?

1. If Persons Assemble together to the intent to do any unlawful Act, with force or violence against the Person of another, his Possession or Goods as aforesaid, or to do any other unlawful act (with force or violence) against the Peace, or to the manifest terror of the People, if they only meet to such a purpose or intent, although they shall after depart of their own accord, without doing any such thing, yet this is an unlawful Assembly. *Dalt. 1. P. 278.*

2. If after their meeting, They shall ride, go, or move forward toward the execution of any such act (whether

(whether they put their intended purpose in execution or not) This is a Rout. *Dalt.* 278.

3. And if they execute any such thing indeed, then it is a Riot. *Dalt.* 278.

And saith he, Mr. *Finch* describeth them shortly thus, *fr. libro* 2.

An unlawful Assembly is when Persons shall Assemble to do any unlawful Act. (So that the unlawfulness of the act about which they assemble to do, is that it seems which makes their meeting together to be an unlawful Assembly, and to be an Offence against Law.) A Rout is when they set forward to do it. And a Riot is when they do it indeed. *Dalt.* 278.

Now in Riots, Routs, and unlawful Assemblies, these four circumstances are to be considered. First, The number of the persons Assembled. 2. The intent and purpose of the meeting. 3. The lawfulness, or unlawfulness of the Act. 4. The manner and circumstance of doing it.

The num-
ber.

First, For the number, there must necessarily be three persons at the least, so gathered together (to the intent to do some unlawful act with force or violence, against the Peace, or Person of another, his Possession or Goods, or to the manifest terror of the People as aforesaid,) For else it can be no Riot, ^{1 M. 12.} Rout, or unlawful Assembly (saith *Dalton*) within the meaning of these Statutes. *Dalt.* 278.

1 Eliz. 17.

For saith he, an Assembly of an hundred Persons, or more (yea though they be in Armor) yet if it be not in terror or affright of the People, and were assembled without any intent to break the Peace, It is not prohibited by these Statutes, nor unlawful. *Dalt.* I.P. 279.

2. For

2. For the intent. It seemeth it can be no Riot, Rout, ^{The intent.} or unlawful Assembly, Except there be an intent precedent to do some unlawful Act, and with violence or force. See *Dalt. J. P.* fol. 279. *Cromp. 6. P. R.* 25.

3. As for the lawfulness of the act. Every man may Assemble company to aid him in his House, against in- ^{Lawfulness of the Act.} jury or violence; And every man in peaceable manner may assemble a meet company, (and may come) to do any lawful thing. *Dalt. J. P.* 280.

4. As there must necessarily be three Persons at the least assembled together to make a Riot, Rout, or unlawful assembly, so their being together, and their demeanour must be such, as shall or may breed some apparent disturbance of the Peace; either by threatening speeches, turbulent gesture, shew of Armour, or actual force or violence (to the terror and fearing of the peaceabler sort of people; or to the emboldening and stirring up of such as are busie headed, and of evil disposition, by such fact) or else it can be no unlawful assembly, &c. See *Dalt. J. P.* fol. 281.

And doth, or may it not clearly appear, the premises and circumstances being truly and duely considered, That the peaceable and godly meetings of the innocent people of God reproachfully called Quakers, truly and really to serve and worship the Lord, without any intent, or purpose to do any unlawful act with force or violence as aforesaid, are no unlawful Assemblies; Because their being together, and their demeanour is such, as doth not breed any apparent disturbance of the Peace, neither by threatening speeches, turbulent gesture, nor shew of armour, nor actual force or violence, nor to the terror and fearing of the peaceabler sort of people, who do neither meet in terror or

affright of the people, nor with any intent to break the Peace, by any unlawful act with force or violence.

If any Riot, Assembly, or Rout of People against the Law be made in any part of the Realme, the Justices of the Peace, three or two of them at the least, and the Sheriff or Under-Sheriff of the Shire, where such Riot, Assembly, or Rout shall be made, shall come with the Power of the County (if need be) to Arrest them, and shall Arrest them; And the same Justices; Sheriff or Under-Sheriffs have power to Record, that which they shall find in their presence against the Law, and the same Offenders shall be Convict by the Record of the same Justices, Sheriff or Under-Sheriff, in manner and form as it is contained in the Statute of Forcible Entries. See *Pultons* abstract and Statute, 17: *Rich.* 2.8. Stat:13. *Hen.* 4.7. And see *Forcible Entry* 2.

And in *Forcible Entry*, 2. *Pult.* saith, If a Justice of Peace of the County, or Major, Bayliffe, Sheriff, Justices or Justice of Peace of the City, do fine any that made such Forcible Entry, &c. he shall take the Offenders, and commit them to the next Goal, and there to remain, &c. And whether the Parties which made such Entries be present or gone, at the coming of the Justice, the said Justice, Major, &c. shall in some good Town, or convenient place, near unto the place where such force was made, enquire by a sufficient Jury of the same County, City, &c. of them which made such forcible Entries, and if it be found before them, That any have made Entry in form aforesaid, The said Justices, Major, &c. shall reseiſe the said Lands, and put the party in possession, which in such sort was put out. *Pult.* 132. Stat.8. *Hen.* 6.9.

So that a Riot, Rout, or unlawful assembly is to be enqui-

enquired of and found by a Jury. For if any such Offence be committed within this Realm, the Sheriff having a precept directed to him, shall return four and twenty persons dwelling within the Shire, where such assembly or fact was committed, whereof every of them shall have Lands and Tenements within the same shire to the yearly value of twenty shillings Charter Land, or Free-hold, or twenty six shillings eight pence Copy-hold, or of both above all charges, for to enquire of the said Riot, Rout, or unlawful Assembly, &c. See the Stat. 19. Hen. 7. 13. *Pult. Abstract.*

Arrest and Imprisonment.

An Arrest is the first apprehending and restraining of a mans person, depriving it of its own Will and Liberty, and may be called the beginning of imprisonment. *Dalt. J.P. 405. Shep. Just.P. cap. 6. sect. 1. p. 171.*

Imprisonment is where a man is Arrested against his Will, or is restrained of his Liberty by putting him into the Goal, Cage or Stocks, or into some House, or otherwise by keeping him in the high street, or open field, so as he cannot freely go at liberty when and where he would. *Dalt. J.P. 405.*

If the Constable, or other Officer (upon a Warrant received from a Justice of Peace) shall come unto the party, or require, or charge, or command him to go, or come before the Justice, &c. This is no Arrest or Imprisonment. And upon a Warrant for the Peace, the Officer ought first to require the party to go before the Justice before he may Arrest him. See *Dalt. 405.*

But (saith he) this Arrest (being in Execution of the commandment of some Court, or of some Officer of Justice) is exprest in their Writs by these words or the like *Capias Attachias, &c.* To Attach, Arrest, Take,

Bring, or Convey, or cause to be Attached, Arrested, &c. All which words do imply the taking and laying hold of the persons. *Dalt. J.P. fol. 405, 406.*

Is not the old Law of the Land very tender of the Liberty of a man, yea and of all men of what estate and condition soever they be, without respect of Persons (or differences of Opinions in matters of Religion, Faith and Salvation) seeing it takes care and provides, That no man be imprisoned or destroyed in his Liberty, Person or Estate, without being brought in to answer (or trial) by due course of Law; and if men be imprisoned or destroyed in their Liberties, Persons or Estates, without the Verdict of twelve men, or without being brought in to answer (or Tryal) by due Process of Law, are they not destroyed contrary to *Magna Charta*, and the good old Law of the Land: For by a Statute made in the eight and twentieth year of the Reign of King *Edward* the third, it is amongst other things Enacted, That no man of what Estate or condition soever he be, shall be put out of his Lands or Tenements, nor Taken, nor Imprisoned, nor Disherited without being brought in to answer by due process of Law. *Stat. 28. Edw. 3. c. 3.*

And by another Statute made in the forty second year of the Reign of King *Edward* the third, It is Enacted, That no man be put to answer without presentment before Justices, or matter of Record, or by due process, or by Writ Original according to the old Law of the Land, and if any thing be done to the contrary, it shall be void in Law, and holden for error. *Stat. 42. Edw. 3. cap. 3.*

First, doth it not appear by the Statute; That no man is to be imprisoned without being brought in to answer

(or

(or Tryal) by due proceſſe of Law. (28. *Edw.* 3. 3.) And ſecondly, that no man that is imprifoned, is to be put to answer without preſentment before Juſtices, or matter of Record, or by due Proceſſe, or by Writ Original according to the old Law of the Land. And thirdly, That if any thing be done to the contrary, It ſhall be void in Law, and holden for error. *Stat.* 42. *Edw.* 3. 3.

Alſo (ſaith *Dalton*) *The Liberty of a man is a thing ſpecially favoured by the common Law of the Land, and by the Statute of Magna Charta, made 9. Hen. 3. 29. No Freeman ſhall be Taken, or Imprifoned, or Diſſeiſed of his Freehold, or Liberties, or free Customs, or be Outlawed, or Exiled, or otherwiſe deſtroyed; but by the lawful Judgement of his equals, upon his conviction for ſome offence, by the Verdict of a Jury of twelve good and lawful men, or by the Law of the Land. See the Petition An. 3. Car. Regis. And Stat. 5. Edw. 3. cap. 9. Dalt. J. P. 406.*

And by this Statute of *Magna Charta* (ſaith *Dalton*) every Arreſt or Imprifonment, and every Oppreſſion againſt the Law of the Land is forbidden; and if any Judge, Officer, or other perſon againſt the Law, ſhall uſurp any Jurisdiction, and by colour thereof ſhall Arreſt, Imprifon, or Oppreſſe any man, it is puniſhable by the Statute. See *Dalt. J. P. fol. 406. Co. 10. 75.*

This grand Charter is a declaration of the ancient common Law. *Co. 10. 48.* And the Statute of *Magna Charta*, and *Charta de Forreſta* for their excellency have ſince been confirmed by the Authority of above thirty ſeveral Parliaments. See *Cooks* Preface to the eighth Report, and *Dalt. J. P. fol. 406.*

Note that all Jurisdiction (ſaith he) ought to be either

ther by Charter, or by prescription. See *Co.* 11. 99. and *Dalt.* 405.

Also by the Statutes of 25. *Edw.* 3. *cap.* 4. 28. *Edw.* 3. 3. and 42. *Edw.* 3. *cap.* 3. No person shall be taken or Imprisoned, nor put to answer unless it be by Indictment, or Presentment of a Jury before Justices, or by matter of Record, or by due Process made by Writ Original at the Common Law.

Saith he, A Commission to Arrest or Take a man, (and his goods) was holden to be against Law, for that this ought to be either upon Indictment, or suite of the partie, or other due processe of Law, Saith *Dalton* 407 Br. Comiss. 15. 16. and Faux. Imprisi. 9. and Indictment 38. 42. All. 5. 12. 42. *Ed.* 3. 9. *Co.* 5. 64.

And so note (saith *Dalton*) That no man shall be Arrested for Debt; Detinue, Trespasse, or other cause of Action, but onely by vertue of a precept or Commandment out of some court of Record, *Dalt.* I. P. fol. 407. Neither shall any man Commit Another to Prison Except he be a Judge of Record, *Cooke* 10. 103. *Dalt.* 407.

But yet for Misdemeanors done against the Kings peace, as for Treason, Felony, &c. The Offenders as well by the Comon Law, as by diverse Statutes may be Arrested and Imprisoned by the Officers of Justice *Dalt.* 407. And yet for the Arresting of the body of a man in such cases, There must be some just cause, &c. saith *Dalton.* *Dalt.* I. P. fol. 407.

The Manner of Commitment of such Offenders. When any person shall be brought before a Justice of peace for Murder, Manlaughter, or any other Felony (wherewith the Justice of Peace may deale,) or for Suspition thereof before the Justice shall Commit or send

send such Offenders to Prison (saith *Dalton*) he shall take First, the Examination of such Offendors.

2. The Information of such as bring him, *viz.* He shall take their Examination, and Information of the Fact, and Circumstances thereof, and so much thereof, as shall be material to prove the fact, shall be put in writing within two days after the said Examination. 3. The same Justice of Peace shall binde all such by Recognisance, as do declare any thing Materiall to prove the fact, to Appeare at the next generall Goale delivery (to be holden where the Tryall of the said fact shall bee) Then and there to give in Evidence against such Offendors. *Dalt.* 365.

4. And then the same Justice shall make his Mittimus to Carry the Offendor to the Goale. 5. And the said Justice or Justices of Peace shall Certifie at the next generall Goale delivery such Examination, Information and Recognisance. See the Stat. 1. & 2. *Ph. & Ma.* 13. *Dalt.* I. P. fol. 395.

No man is to be Attached by Any Accusation nor Forejudged of life or Limb, &c. against the Forme of the Charter, and the Law of the Land.

For by A Statute made in the fifth year of the Raigh of King Edward the Third, It is Enacted, That no man shall be Attached by any Accusation, nor Forejudged of Life or Limb, nor his Lands, Tenements, goods nor Chattells Seized into the Kings hand against the Forme of the Charter, and the Law of the Land, see the Stat. 5. *Ed.* 3.

And by Magna Charta many times confirmed in Parliament, It is Enacted, That no Freeman be Taken and Imprisoned, or Disseized of his Freehold, or Liberties, or Free Customs, or be Outlawed, or Exiled,

or

or otherwise Destroyed, but by Lawfull Judgment of his Peers, or by the Law of the Land, we shall sell to no man, we shall deny or deferre to no man either Justice or Right. 9. *Hen. 3. 29.*

*Cook upon
Mag. char.
fol c. 2, &c.*

And *Cook* upon *Magna Charta* saith, That upon this Chapter, as out of a Root many fruitful Branches of the Law of *England* have sprung. It containeth nine several branches.

First, that no man be taken and Imprisoned but by the Law of the Land, that is to say, Common Law, Statute Law, or Customs of *England*.

2. No man shall be disseized, *viz.* put out of his Freehold, that is, Land, Livelihood, or Liberties, such as belong to him by his Free Birth-right, unless it be by the lawful Judgement and Verdict of his Equals, by due course and Process of Law.

3. No man shall be Outlawed, or put off the Law, that is, deprived of the benefit of the Law, unless he be Outlawed by the Law of the Land.

4. No man shall be Exiled or Banished, but by the Verdict of his Equals, or according to the Law of the Land.

5. No man shall be destroyed, &c. unless by Verdict, and according to the Law of the Land.

6. No man shall be condemned, but by the Judgement of his Equals, or according to the Law of the Land.

7. We shall sell to no man Justice or Right.

8. We shall deny no man Justice or Right.

9. And ninthly, we shall defer no man Justice or Right.

And as it is Enacted, That no man of what Estate and condition soever he be, shall be taken or Imprisoned, &c. without being brought in to answer by due Pro-

Processe of Law; So likewise no man that is imprisoned is to be put to answer without Presentment, or matter of Record, or by due Processe made by Writ Original according to the old Law of the land. And moreover it is Enacted, That if any thing be done to the contrary, it shall be void in Law, and holden for error, as by the Statute appeareth. See *Stat.* 28. *Edm.* 3. c. 3. and *Stat.* 42. *Ed.* 3. c. 3.

Are not they who are first Condemned, and Fined before they be imprisoned, and after they be condemned and fined without the Verdict of their Equals, are committed to prison without Baile or Mainprize, are they not committed to Prison without being brought in to answer or Trial? And if they be committed to Prison without being brought in to answer by due Processe of Law, are they not committed contrary to the form of the Charter and Statutes aforesaid? And is it not void in Law? seeing that no man is to be taken and imprisoned without being brought in to answer by due Processe of Law. And that no man that is taken and imprisoned is to be brought in to answer without Presentment or Indictment, or matter of Record before Justices, or by due Processe, or by Writ Original according to the old Law of the Land, and that if any thing be done to the contrary, it shall be void in Law and holden for error as aforesaid. 28. *Ed.* 3. 3. and 42. *Ed.* 3. 3.

No man shall be condemned without Presentment or Indictment of good and lawful people of the same neighbourhood where the fact is committed, &c.

For the Law of the land provides and takes care that no person or persons shall be condemned upon suggestion, without lawful Presentment or Indictment of his

good and lawful people of the same neighbour-hood, where such deeds be done in due manner, or by Proceſſe made by Writ Original at the Common Law, nor none ſhall be put out of his Franchiſe, nor out of his Freehold, unleſs he be duly brought in to answer, and forejudged of the ſame according to the courſe of the Law, and if any thing be done againſt the ſame, it ſhall be redreſſed and holden for none : See *Stat. 25. Ed. 3. cap. 4. Stat. 5. Edw. 3. 9. Stat. 28. Edw. 3. 3. Stat. 42. Edw. 3. 3.*

They which make falſe ſuggeſtions ſhall be puniſhed by imprisonment until they ſatiſſie the party wronged, &c.

Item, Though it be contained in the great Charter, That no man be taken, nor imprisoned, nor put out of his Freehold without Proceſſe of the Law, nevertheless divers people make falſe ſuggeſtion to the King; as well for malice as otherwiſe, whereof the King is often griev'd, and divers of the Realm put in damage againſt the form of the ſame Charter. Wherefore it is ordained, *That all they which make ſuch ſuggeſtions ſhall be ſent with the ſame ſuggeſtions before the Chancellor, or Treasuſer, and his grand Council, and that they there find Surety to purſue their ſuggeſtions, and incur the ſame pain that the other ſhould have had, if he were attainted, in caſe that his ſuggeſtion be found evil, and that then proceſs of the Law be made againſt them without being taken and imprisoned againſt the form of the ſaid Charter and other Statutes: Stat. 37. Edw. 3. 18. St. 9. Hen. 3. 29. and 25 Edw. 3. 4. St. 42. Ed. 3. 3.*

Item, As to the Article made of the laſt Parliament of thoſe that make grievous complaints to the King himſelf it is aſſented, That if he that maketh the complaint

plaint cannot prove his intent against the defendant by the proceſſe limited in the ſame Article, he ſhall be committed to Priſon, there to abide till he hath made agreement to the party of his damages, and of the ſlander that he hath ſuffered by ſuch occaſion; and after ſhall make Fine and Ransom to the King, and the point contained in the ſame Article, That the Plaintiff ſhall incur the ſame pain, which the other ſhould have, if he were attainted, ſhall be out in caſe that his ſuggeſtion be found untrue. See the *Stat.* 38.

Edw. 3. c. 9.

38 Ed. 3.
cap. 9.

All men are to have even Law and Execution of right, both rich and poor, without reſpect of Perſons.

The Law of the land provides and takes care, that all men ſhall have even Law, and Execution of Right, both rich and poor, for by a Statute made in the reign of King *Edward* the third, the King hath declared, *That he by his Oath is bound to maintain the Law of the Land.* And perceiving that the Law of the Land was not well kept, and the execution of the ſame diſturbed many times by maintenance and procurement, as well in the Court as in the Country.

The King being (as he ſaid) greatly moved of Conſcience in this matter, and for this cauſe, deſiring as much for the pleaſure of God, and eaſe and quietneſs of his ſubjects, and for to ſave and keep his ſaid Oath.

By the conſent of his Council and other wiſe men did ordain that all his Juſtices ſhould from thenceforth do even Law and Execution of Right to all his ſubjects rich and poor:

The Juſtices of both Benches, Aſſize, &c. ſhall do right to all men, and take no Fee, but of the King.

First, We have commanded all our Juſtices, *That*

20 Edw 3 they shall from henceforth do equal Law, and execution of
 cap. 1. right to all our subjects, rich and poor without having
 regard to any person, and without omitting to do right for
 any Letters, or Commandment, which may come to them
 from us, or from any other, or by any other cause. 20.
 Edw.3. cap. 1.

And if that any Letters, Writs, or Commandments
 come to the Justices, or to others deputed to do Law
 and Right according to the usage of the Realm, in dis-
 20 Edw 3 turbance of the Law, or of the Execution of the same,
 or of right to the Parties, The Justices and other afore-
 said shall proceed and hold their Courts, and Processies,
 where the Pleas and matters be depending before
 them, as if no such Letters, Writs, or Commandments
 were come to them.

And they shall certifie Us, and our counsel of such
 Commandments which be contrary to the Law as is
 aforesaid.

And to the intent that our Justices should do even
 Right to all people in the manner aforesaid without more
 favour shewing to one then to another, We have ordained
 and caused our said Justices to be sworn, that they shall
 not from henceforth, as long as they shall be in the Office
 of Justice, take Fee, nor Robe of any man, but of our self,
 And that they shall take no gift, nor Reward by them-
 selves, nor by other, privily nor apertly of any man that
 hath to do before them by any way, except meat and
 drink, and that of a small value, &c. And for this
 cause we increased the Fees of the same our Justices in
 such manner as it ought reasonably to suffice them. Stat.
 20.Ed.3.1. St.2.Ed.3.8. St.11.Rich.2.10.Regist.f.186.

See the Oath of the Justices being made Anno the
 18. Edw.3. wherein it is contained, That they shall
 well.

well and lawfully serve the King, and his people in the Office of Justice, and that they shall do equal Law, and execution of Right to all his subjects, rich and poor without having regard to any person, and that they deny to do no man common right by the Kings Letters, nor none other means, nor for none other cause; and in case any Letters come to them contrary to the Law, that they do nothing by such Letters, but certifie the King thereof, and proceed to execute the Law notwithstanding the same Letters. And in case they be from thenceforth found in default in any of the points aforesaid, They shall be at the Kings Will of body, Lands, and Goods, thereof to be done as shall please him. See the Oath of the Justices (at large) being made Anno the 18. Edm. 3. and Anno Dom. 1344.

No Commandment under the Kings Seal shall disturb or delay Justice.

Item, it is Recorded and established, That it shall not be commanded by the Great Seal, nor the little Seal, to ^{2 Edw. 3. cap. 8.} disturb or delay common right, and though such Commandments do come, the Justices shall not therefore leave to do Right in any point. Stat. 2. Ed. 3. St. 9. Hen. 3. 29. St. 5. Ed. 3. 9. and 14. Ed. 3. 14.

None shall be attached or forejudged contrary to the great Charter and the Law of the land. ^{9 Hen. 3. 29. 2 Ed. 3. 8. 14 Ed. 3. 14. 18 Ed. 3. 3.} Item, It is enacted, That no man from henceforth shall be attached by any accusation, nor forejudged of Life or Limb, nor his Lands, Tenements, Goods, nor Chattels seized into the Kings hands against the form of the Charter, and the Law of the Land. Stat. 5. Ed. 3. cap. 9.

None shall be put to answer an Accusation made to the King without Presentment, or some matter of Record, &c.

Item,

Item, At the Request of the Commons by their Petitions put forth in this Parliament to Eschew the mischiefs and damage done to divers of his Commons by false Accusers, which oftentimes have made their Accusations more for revenge and singular benefit, than for the profit of the King, or of his people, which accused persons some have been taken, and sometimes caused to come before the Kings Counsel by Writ, and otherwise upon grievous pain against the Law. It is assented and accorded, for the good Governance of the Commons, That no man be put to answer without Presentment before Justices, or matter of Record, or by due processe made by Writ Original according to the old Law of the Land. And if any thing from henceforth be done to the contrary, it shall be void in the Law, and holden for error. Stat. 42. Ed. 3. ca. 3. St. 25. Ed. 3. 4. and 37. Ed. 3. 18.

None shall be condemned without lawful Presentment, &c.

Item, Whereas it is contained in the great Charter of the Franchises of England, That none shall be imprisoned, nor put out of his Freehold, nor of his Franchises, nor free Customs, unless it be by the Law of the Land: It is Accorded, Assented and Established, That from henceforth none shall be taken by Petition, or suggestion made to our Lord the King, or to his Counsel, unless it be by Judgment or Presentment of his good and lawful People of the same neighbourhood, where such deeds be done in due manner, or by Processe made by Writ Original at the Common Law: Nor that none be put out of his Franchise, nor of his Freeholds, unless he be duly brought in to answer and forejudged of the same by the course of the Law: And if any thing be done against the same, it shall be redressed and holden for none:

Stat.

Sat. 25. Edward 3. 4. Stat. 5. Edw 3. 9. Stat. 28. Ed. 3. 3. and Stat. 42. Edw. 3. 3.

If the Law of England cannot be lawfully executed without a Jury, who are said to be the true and Ordinary Judges of the land, whose verdict is the effectuall Judgment, (as its said) whereby all men, are Judged by their Peers, as well for their lives as lands, &c. if so, how careful ought Jurors to be, that they neither ignorantly nor wilfully destroy men in their lives, liberties, or estates, who are so entrusted therewith upon tryalls, and so greatly Concerned in the same, And if men be Condemned or in many sort destroyed; without the verdict or Judgment of a Jury, is the Law of England lawfully Executed upon them? Jur. p. 23.

And Concerning Banishment, *Cook* upon the 29. Chapter of *Magna Charta*, saith, that by the Law of the land no man can be exiled or Banished out of his native Countrie, but either by Authority of Parliament or in case of abjuration for felony by the common Law. *Co. 2. part. Institutes. fol. 47.*

Then is it not evident and remains true, that no man ought to be Banished (by the Law of England) out of his native Countrey for the Service and worship of God, (in the way and manner appointed by the word and Spirit of God) because it is not felony to serve and worship the Lord, Neither is it Enacted, Ordained and declared by Authority of Parliament, That (such and such persons or) any man shall be Banished out of his native Countrey for the Service and worship of God.

If Judges take upon them to condemne and passe the Sentence of Transportation or Banishment upon others, for error (as they Apprehend) about the manner of the worship of God, whilst the Judges themselves

selves (according to their owne confession in evidence against themselves) do daily erre and go astray from the wayes of God, and dayly offend against the lawes of God, do not they in so doing condemn others for the same or the like offence as the Judges know themselves guilty of; And saith *Andrew Horne* in the *Mirror of Justice*, Criminall persons are forbidden by the law, to be Judges, for (saith the same Author) God when he was upon Earth entred into the Consistory, where a Sinner was to be Judged to death when God wrote upon the ground, and said to the sutors who came to Judge her, who of you is without Sin; and there gave a Judgment as an example to Judges, who take upon them every day to Judge the people, whereby he taught them, that none should take upon them so high and noble a calling as to sit in the seate of God to Judge offenders when they themselves are guilty, and Condemnable. See the mirror of Justices, pag. 59. 60.

The END.

